

**MINUTES**  
**ZONING BOARD OF APPEALS**  
**MARCH 16, 2007**

**Location:** Conference Room, 2 Fairgrounds Road, Nantucket, MA  
**Call to Order:** 12:08 PM  
**Members Present:** Nancy Sevens Dale Waine, Michael O'Mara, Kerim Koseatac  
**Alternates Present:** David Wiley, Burr Tupper  
**Absent:** Edward Toole  
**Staff:** Linda Williams, Administrator  
**Department Staff:** Marcus Silverstein, Zoning Enforcement officer

Approval of Minutes by Unanimous Consent: October, November, December 2006, January and February 2007.

**OLD BUSINESS APPLICATIONS:**

**1. RUGGED SCOTT LLC (051-03), RUGGED ROAD:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation.

**Public Comment:** None

**Representing:** Attorney Arthur Reade for the Applicant

**Discussion:** Applicant was back before the Board seeking to alter a proposed garage from a one-car to a two-car on Lot 22. Reade discussed the design and site plan before the Board. The Board felt that the change was insubstantial and of little impact pursuant to 760 CMR 31.03(b), relevant to 40B projects.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO FIND THAT THE CHANGE FROM A ONE-CAR GARAGE TO A TWO-CAR GARAGE ON LOT 22 WAS AN INSUBSTANTIAL CHANGE, AND ALLOWABLE WITHOUT A PUBLIC HEARING, (O'Mara/Waine).**

**Conditions:** NA

**2. MONCURE CHATFIELD-TAYLOR, (079-06), 91 WASHINGTON STREET  
EXTENSION:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made a negative recommendation as there were issues of planning concern.

**Public Comment:** None at this meeting. There had been substantial comment at the first hearing.

**Representing:** Attorney Richard Glidden for the Applicants

**Discussion:** This matter had been continued without further discussion from September, October, November and December 2006, January and February 2007 and then to this meeting. Glidden asked that it be continued again without discussion to the April 13, 2007 meeting.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO APRIL 13, 2007 MEETING WITHOUT FURTHER DISCUSSION, AFTER OPENING AT SEPTEMBER 2006 MEETING. THERE WAS ALREADY AN EXTENTION FOR ACTION ON RECORD UNTIL APRIL 27, 2007, (O'Mara/Waine).**

**Conditions:** NA

**3. PRICILLA L. REIS, (085-06), 80 MIACOMET AVENUE:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Attorneys Arthur Reade and Steven Cohen for the Applicant

**Discussion:** The matter had been continued without opening from the October, November and December 2006 and January and February 2007 meetings and then to this meeting. There were ongoing discussions taking place with the ZEO that may eventually resolve the issue. Cohen again asked that the matter be continued without opening to the April 13, 2007 meeting.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO APRIL 13, 2007 MEETING. THERE WAS ALREADY AN EXTENTION FOR ACTION ON RECORD UNTIL APRIL 27, 2007,** (O'Mara/Waine).

**Conditions:** NA

**4. OLD NORTH WHARF COOPERATIVE, INC., (003-07), 29A, 29B AND 29C OLD NORTH WHARF:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation due to the lack of meetings over the Christmas holiday.

**Public Comment:** One letter in opposition from the Nantucket Land Council

**Representing:** Attorney Arthur Reade and Attorney Whitney Gifford for the Applicant

**Discussion:** The matter had been continued without opening from the January and February 2007 meetings and then to this meeting, whereupon the matter was again continued to April 13, 2007 without opening at the request of the Applicant's attorney. An extension of action had been granted to April 27, 2007 in February.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO APRIL 13, 2007. THERE WAS ALREADY AN EXTENTION FOR ACTION ON RECORD UNTIL APRIL 27, 2007,** (O'Mara/Waine).

**Conditions:** NA

**5. DORIS J. LENNON, TRUSTEE, LIVING TRUST OF JOSEPH P LENNON AND DORIS J. LENNON, (009-07), 2 WAYDALE ROAD:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Wiley

**Planning Board Rec.:** The Planning Board made no recommendation.

**Public Comment:** None

**Representing:** Attorney Julie Fitzgerald for the Applicant

**Discussion:** The matter had been continued without opening from the February 2007 meeting due to quorum issues. Fitzgerald gave a history of the property. In the early 1970's the lot was being used as part of a construction company's property. The single-family dwelling was built after 1975 and in 1979 a new addition was constructed pursuant to a building permit. The setback requirement had changed that same year from three feet to ten feet. The addition was built with a three-foot setback at its closest point after the change in the By-law. Applicant was seeking variance relief to validate the addition. No CO was ever issued. On the building permit, there was a notation that the addition was going to be used as a beauty salon, with Evelyn Lennon having moved her salon business from her rented downtown salon to her home, from which she operated until her death in 1986. Since that time outside people had continued to operate the salon to the present. Applicant was asking to validate the neighborhood service establishment and be able to alter the use within the scope of the Section 139-8B(2) allowances without having to come back to the Board each time the use changed. The Board was uncomfortable granting that relief and instead validated the existing use as a beauty salon with the proviso that any alteration of the use had to come back to the Board for modification. Fitzgerald showed pictures of the interior with three hair cutting chairs. A site plan was submitted showing six parking spaces on site and asked that the loading zone be waived. Williams pointed out to the Board that it generally did not require loading zones or relief to waive them for this type of use in the past and that the Board had already approved three other such salons in the same neighborhood, two within a few hundred feet.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTION 139-8B(2) TO VALIDATE THE USE AS A BEAUTY SALON AND BY VARIANCE PURSUANT TO SECTION 139-16A, TO VALIDATE THE**

**SITING OF THE ADDITION AND TO THE EXTENT NECESSARY, BY SPECIAL PERMIT TO WAIVE THE LOADING ZONE, (Waine/Wiley).**

**Conditions:** Exhibit A; no further expansion of the structure within the required setback areas or change in use without further relief from this Board; maximum of three employees at peak shift on site.

**NEW BUSINESS:**

**6. JANET P. MURPHY, TRUSTEE OF FISH LANE REALTY TRUST (010-07), 5 SPRING STREET:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Attorney Bruce Gilmore for the Applicant

**Discussion:** Gilmore asked to have the matter continued without opening to April 13, 2007 meeting as he was going to be away. An extension for action was agreed to May 17, 2007.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO APRIL 13, 2007, AND BY THE SAME VOTE GRANTED AN EXTENSION FOR ACTION TO MAY 17, 2007, (O'Mara/Waine).

**Conditions:** NA

**7. HAROLD A. O'CALLAGHAN, JR., TRUSTEE FOR GORHAM'S COURT NOMINEE TRUST (011-07), 1 GORHAM'S COURT/29 ½ UNION STREET:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Wiley

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** Attorney Bill Hunter for an abutter, the Humphrey family on Union Street, spoke in opposition. Hunter stated that it was a self-inflicted wound and there was no hardship. Ginger and Hamilton Heard, direct abutters and the owner of the land across which the easement was laid out, spoke in favor and said that all of their concerns had been met, particularly with the Applicants' agreement to limiting both lots to one dwelling unit. There were seven letters on file in favor.

**Representing:** Attorney Emily Avery for the Applicant, Harold and Patricia O'Callaghan for themselves as Applicants, Ted Burnham, engineer for the Applicants

**Discussion:** Avery and Burnham explained the unique topography of the lot, with the Orange Street portion having the larger primary dwelling on an area of the lot that was considerably higher in elevation than the lower portion on Union Street that contained the cottage. He stated that there was no way to access the other portion of the lot from either area due to the steepness of the grade. Avery showed maps of the area that indicated that there were no other Orange Street properties that owned a flat area with a structure on them below the bluff, further adding to her argument that the lot had unique topographical aspects that would support a grant of variance relief in her opinion. Once subdivided, both lots would be conforming as to lot size and ground cover. The only issue that remained for the Union Street lot was the lack of frontage, accessed only by a permanent 20-foot way from Union Street. The easement was used as a driveway by both the Applicants and the Heards, was improved with a curb cut and surfacing. Avery pointed out that when the Planning Board gave approval for the secondary dwelling on the Union Street portion, they had no issue with the access and found that it was adequate and practical. Two years ago the Applicants had asked for relief from the ZBA and in the face of substantial neighborhood opposition at that time were denied. This time all seemed to be satisfied that with the restriction to one dwelling on each lot there would be no further concern. Sevens questioned whether any of the letters in favor were from Union Street abutters. She also questioned the status of the easement. She then argued that the Applicants were trying to take the 20-feet of lot area away from the Heards with the subdivision. Avery explained to the Board that the lot line did not include the easement. Sevens stated that the Board would be creating a problem for the future that the neighbors would have to live with. O'Mara stated

that if the lot were flat there would be no way to issue relief to subdivide a lot that would have no frontage. Avery agreed and stated that there was a hardship for the Applicants due to a divorce, placing of the property into a trust for the children and need for the Applicants to maintain a house of their own by separating the ownership of the two houses as a result of the agreement among family members, and that not granting the relief would result in their inability to have a home here.

**Action/Vote:** UPON A MOTION DULY MADE AND SECONDED TO GRANT THE REQUESTED VARIANCE RELIEF BASED UPON THE UNIQUE TOPOGRAPHY OF THE LOT AND SUBJECT TO THE FOLLOWING CONDITIONS: EXHIBIT A, ONE DWELLING UNIT PER LOT, NO INCREASE IN GROUND COVER OF THE UNION STREET LOT WITHOUT FURTHER RELIEF FROM THIS BOARD, THERE WERE NO VOTES IN FAVOR AND FIVE VOTES IN OPPOSITION, THE RELIEF WAS THEREFORE DENIED, (Waine/Koseatac).

**Conditions:** NA.

**8. JOHN F. TRUDEL III, AND FOR NANTUCKET TRADING POST, INC., D/B/A NANTUCKET TRADING POST (012-07), 12 NOBADEER FARM ROAD:**

**Sitting:** Sevrens, Waine, O'Mara, Koseatac, Tupper (both Waine and O'Mara stated that they had both had worked with Wong in the past but had no ongoing financial involvement with him)

**Planning Board Rec.:** The Planning Board made a favorable recommendation.

**Public Comment:** None

**Representing:** Attorney Paul Jensen for the Applicants, John Trudel for himself as Applicant and for "Wong", the individual who would be in charge of the commercial kitchen.

**Discussion:** Jensen gave a history of the previous Decisions related to the retail store on the first floor, apartment on the second floor and the waiver of one parking space and the loading zone with each shared with the abutting lot to the east. Applicant now proposed to install a catering kitchen in the basement. Though the Board rarely sees such kitchens, with permits usually issued through the building department, this matter had to come to the Board given that it was a commercial property and had previous relief granted. There was also the confusion as to whether there would be any additional parking spaces required for the kitchen. The people living in the apartment would be working in the store as well as the kitchen and there was a potential to count them three times. The food prepared and pre-packaged would be for sale in the store and by delivery only. There would be no take-out made to order service. Trudel stated that he had talked to the neighbors and no one had any concerns.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED MODIFICATION OF THE SPECIAL PERMIT RELIEF UNDER SECTION 139-18 TO WAIVE ANY ADDITIONAL PARKING SPACES FOR THE COMMERCIAL KITCHEN AND UNDER SECTION 139-9B(2)(i) TO ALLOW THE COMMERCIAL KITCHEN IN THE BASEMENT FOR THE PROCESSING AND MANUFACTURING OF PRE-PACKAGED FOOD ITEMS, (Waine/O'Mara); **BY THE SAME UNANIMOUS VOTE SITE PLAN REVIEW WAS WAIVED.**

**Conditions:** Relief is particular to the Applicant without further relief from the Board; same conditions as contained in previous Decisions.

**9. J. ROBINSON WEST, TRUSTEE OF 23 NEW STREET NOMINEE TRUST (013-07), 23 NEW STREET, SIASCONSET:**

**Sitting:** Sevrens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Attorney Melissa Philbrick for the Applicant

**Discussion:** Philbrick gave a history of the property and explained that relief had been granted to expand the one-story garage by the ZBA in 2001 without getting any closer to the rear yard lot line. Applicant now proposed to convert the small accessory building into a secondary dwelling without expanding the ground cover or adding a second floor. The HDC had already approved the exterior

changes for the conversion. Philbrick stated that other than the setback intrusion the property and structures were conforming in all other respects. The nearest abutter to the west was the “way” that accessed the commercial property to the rear owned by the Sconset Woodman, who was also the abutter to the rear.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED MODIFICATION OF THE SPECIAL PERMIT RELIEF GRANTED IN THE PREVIOUS DECISION IN BOA FILE NO. 082-01 AND SPECIAL PERMIT RELIEF UNDER SECTION 139-33 TO ALLOW THE CHANGE IN USE FROM GARAGE TO SECONDARY DWELLING, (O’Mara/Waine).

**Conditions:** HDC; no further expansion within the required setback areas or change of use without further relief from this Board.

**10. BARBARA B. SPITLER, (014-07), 85 MILLBROOK ROAD:**

**Sitting:** Sevens, Waine, O’Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made a favorable recommendation for either form of relief.

**Public Comment:** There were two letters in favor and one letter in opposition from abutters on file. Attorney Jeff Stetina represented direct abutter Karen Schwenk at 96 Madaket Road, who was in opposition to the grant of special permit relief, and argued that special permit relief was not available and variance relief was appropriate. Any hardship was of the Applicant’s own making.

**Representing:** Attorney Arthur Reade for the Applicant, Barbara Spitler was present for herself as Applicant.

**Discussion:** Discussion centered on whether the ZBA could grant special permit relief or variance relief. The property and structures had been conforming until the 2006 Town Meeting changed the zoning and rendered the lot nonconforming solely as to ground cover. Reade stated that as the ground cover was nonconforming, the ZBA could now grant special permit relief to expand the ground cover from just over the maximum now allowed of 4% to about 5.7% based upon a Land Court case, *Mandalos v. Mashpee Zoning Board of Appeals et al*, 13 LCR 572; Misc. Case No. 303522. Administrator Williams and Stetina argued that Land Court cases could not be used as precedent and only cases that had been appealed or an SJC case could be used as such and based upon *Rockwood v The Snow Inn Corp.*, 409 Mass. 361 (1991), special permit relief clearly was not allowed for such increases in the nonconformity. In addition, Williams stated that she had called Don Schmidt at EOCD asking about precedent cases of Land Court versus the SJC and was told that unless Nantucket puts language in the local Zoning By-law that specifically allows such an increase by special permit, the Land Court case was not binding, could not be used as precedent, and any such expansion of the structures had to be done by variance. He also cited the *Snow Inn* case as precedent for variance relief. After much discussion the Board asked Williams to seek the advice of Town Counsel prior to the next meeting. ZEO Silverstein stated that he agreed with Williams and Stetina that special permit relief was not available for this. He read from the “zoning bible”, Babrowski, to prove his point. Anything that adds or aggravates a nonconformity, such as increasing nonconforming ground cover, must have variance relief unless the By-law specifically allows for this. Reade stated that he did not want to ask for variance relief and Williams stated that she had originally had it in the notice in the alternative and Reade had asked for it to be taken out.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO HAVE THE ZBA ADMINISTRATOR CONTACT TOWN COUNCIL TO GET A WRITTEN OPINION ON THIS ISSUE PRIOR TO THE NEXT MEETING, AND BY THE SAME VOTE, CONTINUED THE MATTER TO APRIL 13, 2007 AFTER OPENING, (Waine/Koseatac).

**Conditions:** NA

**11. NANTUCKET ISLAND RESORTS RETAIL, OWNER AND FOR MIDISH CORP., LESSEE, (015-07), STRAIGHT WHARF:**

**Sitting:** Sevens, O’Mara, Koseatac, Tupper (Waine specifically recused)

**Planning Board Rec.:** The Planning Board made a favorable recommendation.

**Public Comment:** None

**Representing:** Larry Whelden, Lessee.

**Discussion:** Applicant asked that the matter be withdrawn without prejudice.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED WITHDRAWAL WITHOUT PREJUDICE, (O'Mara/Koseatac).

**Conditions:** NA

**12. RICHARD A. VALERO AND GALE L. VALERO, (016-07), 1 GOOSE POND LANE:**

**Sitting:** Sevrens, Waine, Koseatac, Wiley, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** There was one letter in favor on file from the nearest abutter Brent Young.

**Representing:** Richard Valero for himself as Applicant

**Discussion:** Valero stated that he had constructed a two-story addition onto his single-family dwelling a few years ago and when he went to get the CO with the new as-built plot plan it showed that a corner of the addition was sited within the required five-foot side yard setback area by a few inches. He had measured the addition off the old fence that he thought was on the lot line. It would be a substantial hardship for Valero having to cut off a piece of the addition. Valero stated that it was unintentional and made more difficult as the lot line angled off at that point and the house was not parallel to the lot line. He did not have a surveyor set the batter boards for him, and thus no special permit relief was available to him. He stated that there was minimal or no impact on the neighborhood given the mixed commercial use of the area and the fact that his family owned most of the surrounding property.

**Action/Vote:** IT WAS VOTED FOUR IN FAVOR (WAINE, KOSEATAC, WILEY, TUPPER) AND ONE OPPOSED (SEVRENS) TO GRANT THE REQUESTED VARIANCE UNDER SECTION 139-16A TO VALIDATE THE SITING OF THE ADDITION, (Waine/Wiley).

**Conditions:** Exhibit A.

**13. JAMES M. MERBERG, TRUSTEE, BLUE SKY REALTY TRUST, AND RICHARD TRAVIGLIONE, PRINCIPAL (017-07), 66 SURFSIDE ROAD:**

**Sitting:** Sevrens, O'Mara, Koseatac, Wiley, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Richard Traviglione for himself as Applicant, Tori Wilson, agent for the Applicant, Dick Earle, surveyor for the Applicant

**Discussion:** Wilson and Traviglione explained the site plan in detail and what was exactly encroaching into the required 10-foot side and rear yard and 20-foot front yard setback areas. Both the garage/apartment and primary dwelling vertical walls were conforming in all respects except as to some of the overhangs with integrated drainage systems built into them as part of the design of the house. Applicant showed the HDC approved plans with the front pent roof on the primary structure that extended into the front yard setback area. It was on the plans at the time the property was staked out. Earle explained that due to the very difficult topography of the lot, the need to site the garage on a flat area of the lot and the need to maintain stability of the structures, an error was not out of the question from the beginning. The Applicant had worked with the surveyor the entire time and it was unintentional. He submitted a letter detailing the process during the project. The project had started in 2000 when surveyors were less diligent about using the approved HDC plans to site a building and errors occurred when overhangs, steps, porches and the like were not accounted for when setting the foundation placement. Today, they are much more aware and make sure that they see the HDC plans. The Applicant stated that it would be a grave financial hardship for him to have to rip off the eaves and drainage system. All relief was available by special permit to validate the front yard setback intrusion as he had relied on a survey to site the primary dwelling and special permit relief was available to reduce the side and rear yard setbacks in the R-10 district to validate the other intrusions. Looking at the

building one could not tell that it was not in compliance as the primary dwelling was sited below the street grade. Wilson submitted several pictures showing the site and surrounding properties. She stated that the ZEO did not consider the retaining walls to be an issue and the only thing outstanding was the siting of the overhangs.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTIONS 139-16C(1) AND 139-16C(2) TO VALIDATE THE SITING OF THE TWO STRUCTURES AS SHOWN ON EXHIBIT A, WITH A WITHDRAWAL WITHOUT PREJUDICE OF THE VARIANCE RELIEF REQUEST, (Koseatac/Wiley).

**Conditions:** Exhibit A; no further building within the required setback areas without further relief from this Board.

**14. LUCY HEHIR, TRUSTEE, ACH NOMINEE TRUST (018-07), 13 YOUNGS WAY:**

**Sitting:** Sevrens, O'Mara, Koseatac, Wiley, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:**

**Representing:** Patrick Hehir for himself as Applicant

**Discussion:** Hehir stated that when he had planned his project prior to the grant of the previous relief in 2003, he had intended to construct a second building that would have been used as a single-family dwelling. He had constructed his mixed-use commercial/apartment building and found that he needed more interior storage space to use in conjunction with his contracting business. He asked that the Board modify the previous Decision to allow him to build another commercial building rather than the dwelling, and use it for his own business. There would be no apartment over the top of this new structure. He also asked to modify the Decision and in order to substitute new Exhibit A that showed the new building which had not received HDC approval yet. All required parking spaces and loading zone would be provided on site. He would have no exterior storage of goods or materials.

**Action/Vote:** IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED MODIFICATION OF THE SPECIAL PERMIT RELIEF GRANTED UNDER SECTION 139-9B(2)(a), (b) AND (c) TO EXPAND THE STORAGE AND WAREHOUSING ASSOCIATED WITH THE APPLICANT'S BUSINESS TO A NEW CONFORMING STRUCTURE AND TO SUBSTITUTE A NEW EXHIBIT A, (Wiley/O'Mara); AND BY THE SAME VOTE, APPROVED THE SITE PLAN UNDER SECTION 139-23.

**Conditions:** Exhibit A; same conditions as in the previous Decision with the Board's reiteration that there would be no outside commercial storage of good and materials.

**15. CASSANDRA HENDERSON IRVINE, (019-07), 6 WINTER STREET:**

**Sitting:** Waine (acting chairman), O'Mara, Koseatac, Wiley, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Doug Mills, designer for the Applicant

**Discussion:** Mills explained that the Applicant was renovating the single-family dwelling. This work was to include expansion of a conforming dormer on the southerly side of the structure and construction of two new dormers on the northerly side of the structure. The smaller of the dormers to the rear would be conforming. A few inches of the larger forward dormer would be sited within the required five-foot northerly side yard setback area, being a flush dormer, but would not come any closer to the lot line than the existing structure. Mills stated that most of the dormer would be conforming. The dormers were needed to provide code compliant headroom for a bathroom and to get light into the second floor areas. The HDC had spent some time on the project and had approved it as appropriate for this historic structure.

**Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTION 139-33A TO ALLOW CONSTRUCTION OF THE DORMER AS PROPOSED, (Wiley/Koseatac).**

**Conditions:** HDC.

**16. CHARLES W. FISHER, II AND CYNTHIA PERRY FISHER, (020-07), 7 WEST MIACOMET ROAD:**

**Sitting:** Sevens, Waine, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made a favorable recommendation.

**Public Comment:** None

**Representing:** Attorney Joseph Guay for the Applicants

**Discussion:** Guay asked to have the matter continued without opening to April 13, 2007 meeting as he was going to be away.

**Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO APRIL 13, 2007, (O'Mara/Waine).**

**Conditions:** NA

**17. ELIZABETH SINGER, TRUSTEE OF 64 BAXTER ROAD REALTY TRUST (021-07), 63 BAXTER ROAD, SIASCONSET:**

**Sitting:** Waine (acting chairman), O'Mara, Koseatac, Wiley, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** There were three letters on file in favor from abutters.

**Representing:** Attorney Melissa Philbrick for the Applicant

**Discussion:** Philbrick stated that the Applicant had intended to construct the new garage so as to conform to setback requirements as represented at the previous hearing at which relief was obtained from the ZBA to reconstruct a garage and separate cottage. The cottage was allowed to be sited within the required front yard setback area due to the eroding bluff on the easterly side of the lot. As erosion had continued since that time giving rise to a potential need to relocate the primary dwelling farther to the west, Applicant asked the ZBA to allow the garage to be moved as a precautionary measure into the required setback area to a point no closer than 20 feet from the front yard lot line along Baxter Road. Philbrick pointed out that the new cottage was allowed by variance to be sited as close as about six feet already. The issue of the ZEO refusing to issue a building permit for the garage in its previously approved location as noticed in the paper for this meeting was withdrawn as the ZEO had reversed his ruling and issued the sign off to get the building permit. She submitted aerials photographs showing the erosion along the bluff and placement of many such structures within the setback areas along the east side of Baxter Road. She also pointed out that the ZBA had issued many variances to move structures into the front yard setback in that area due to erosion. Wiley expressed concern that the hedge would be removed from that area of the front yard and asked that a hedge be maintained in the area where the garage was being moved to. There was no Exhibit A available so the ZBA agreed to put limitations on the siting of the garage instead.

**Action/Vote: IT WAS VOTED FOUR IN FAVOR (WAINE, O'MARA, KOSEATAC, WILEY) AND ONE OPPOSED (TUPPER) TO GRANT THE REQUESTED MODIFICATION OF THE VARIANCE RELIEF GRANTED IN THE DECISION IN BOA FILE NO. 049-04 TO ALLOW THE RESITING OF THE NEW GARAGE WITHIN THE FRONT YARD SETBACK AREA AS PROPOSED, (Wiley/Koseatac).**

**Conditions:** Garage shall be sited no closer to the front yard lot line than 20 feet; a hedge row shall be planted and maintained in the front yard area of the garage; same conditions as in previous Decision.

**18. LEIGH J. ABRAMSON AND CARRIE C. ABRAMSON (022-07), 10 SCHOOL STREET:**

**Sitting:** Sevens, O'Mara, Koseatac, Wiley, Tupper (Waine specifically recused himself)



**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Attorney Emily Avery for the Applicants

**Discussion:** Avery stated that the situation on this lot unfortunately became very public when a picture of the demolished house was on the front page of the paper a few weeks ago. The Applicants were in the process of renovating the structure and were moving it from a location on the subminimum lot where the house was sited within the required setback area, to a new location on the same lot that would have been conforming as to setbacks. The house had been positioned over the new foundation hole on hydraulic jacks that may have failed. The house collapsed on itself and was unintentionally destroyed beyond repair. Avery stated that arguably the lot was rendered temporarily vacant and as the Applicants also owned the immediately abutting lot, that contained a house, to the rear of this property in the same name, there may have been an issue of merger. Avery asked the Board to either deny relief and make a finding that no relief was necessary as the lots had not merged or grant a variance to validate the lot as separately marketable and buildable and confer the grandfathered rights back to the lot that it had enjoyed prior to the demolition of the house. Avery explained that the lots were not merged prior to the incident as subminimum lots did not merge if improved with structures prior to 1972 enactment of the Zoning By-law. Avery added that to force merger of the lots would cause an extreme financial hardship on the Applicants. The ZEO stated that he would not have brought up the issue of merger as the Applicants had not abandoned the use of the property and it was no different than the Building Department of the ZBA allowing demolition and replacement of structures without a question of merger every being raised. Avery stated that she had not asked the ZEO for his opinion and was more worried about a future sale of the property and having the issue raised at that time.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO GRANT THE VARIANCE UNDER SECTION 139-16A TO VALIDATE THE LOT AS SEPARATELY MARKETABLE AND BUILDABLE FROM ALL ADJACENT LOTS,** (Wiley/Koseatac).

**Conditions:** All grandfathered rights previously benefiting the lot when the house was still there were re-established by the Board; filing of the variance at the Registry would activate the Decision.

**19. JANE B. CLOUGH AND DAVID CLOUGH (023-07), 3 POND ROAD:**

**Sitting:** Sevens, Waive, O'Mara, Koseatac, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** None

**Representing:** Attorney Bill Hunter for the Applicants

**Discussion:** Hunter asked that the matter be put over without opening as his clients could not get to the Island for the hearing due to the inclement weather.

**Action/Vote:** **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO THE APRIL 13, 2007 MEETING,** (O'Mara/Waive).

**Conditions:** NA

**20. LAWSON H. BILLINGS, JR. TRUSTEE OF THE LAWSON H. BILLINGS, JR. TRUST AND MARJORIE L. COLE BILLINGS, TRUSTS OF THE MARJORIE L. COLE TRUST FOR THEMSELVES AS OWNERS AND FOR TIMOTHY M. SOVERINO, CONTRACT PURCHASER, (024-07), 3 TROTTER'S LANE:**

**Sitting:** Sevens, O'Mara, Koseatac, Wiley, Tupper

**Planning Board Rec.:** The Planning Board made no recommendation as there were no issues of planning concern.

**Public Comment:** There were two affidavits from the previous owner on file attesting to the status of certain features on the lot, and were still abutters to the property, and there were two letters on file from the current owner attesting to the status of certain elements on the property.

**Representing:** Attorney Emily Avery for the Applicants, Tim Soverino for himself as Applicant

**Discussion:** Avery stated that Soverino lived across the street and wanted to purchase the property for his family's use. There would be no new expansion of the structures as part of this Application. The Applicant was seeking to validate work that had been done on the structures over 20 years ago. Both dwellings had been constructed prior to the 1972 enactment of the Zoning By-law and were thus exempt from the primary and secondary 12-foot scalar separation and 20% differential requirements of the Zoning By-law. Avery submitted pictures of the site into the record. The lot itself was dimensionally conforming. However, in 1981 an addition had been constructed onto the rear dwelling that was sited within the required rear 10-foot setback area but no closer to that lot line than the pre-existing dwelling. No special permit relief was obtained at the time or required by the then building inspector. A deck was added some time later, also within the setback area but no closer, prior to 1990 when the scalar separation and 20% differential requirements were put into the By-law for dwellings within the R-10 zone. No CO was ever obtained. No permits were ever issued for the deck. The front stoop on the front dwelling appeared on a 1975 photo and given the construction of the house above grade, it would appear that it was grandfathered as part of the original construction of the building but is sited within the required 20-foot front yard setback area. The steps may have been removed and reconstructed prior to 1990 and also needed to be validated. As the intrusion took place before 1990, no reliance on a survey needed to have been done according to Section 139-16C(2). The rear yard setback intrusion could be done under Section 139-33A as the deck and addition on the rear dwelling did not come any closer to the lot line. Sevrens questioned the need for relief. Avery stated that even though the addition, deck and front stoop were protected under the curative statute provisions, they were noncomplying and not grandfathered, making it difficult to sell and obtain a CO without validation.

**Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTION 139-33A TO VALIDATE THE CONSTRUCTION OF THE ADDITION AND DECK ON THE REAR DWELLING, AND UNDER SECTION 139-16C(2) TO VALIDATE THE FRONT STOOP, WITH A WITHDRAWAL WITHOUT PREJUDICE OF THAT PORTION OF THE APPLICATION THAT ASKED FOR VARIANCE RELIEF AS NOT NEEDED, (Wiley/O'Mara).**

**Conditions:** Exhibit A; no further building or expansion of the structures within the required setback areas.

The meeting was adjourned at 2:59 PM (Wiley/Koseatac)

Respectfully submitted by Linda Williams, recording staff.

